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SENATE BILL 585 By
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HOUSE BILL 986
By Scroggs

AN ACT to amend Tennessee Code Annotated, Title 39, Chapter 11, Part 7, relative to the forfeiture of criminal proceeds in a criminal prosecution.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 39-11-705 is amended by adding the following as subsection (b) and by renumbering the present subsection (b) as new subsection (c):

(b) Jurisdiction in a criminal forfeiture action under this chapter extends to the circuit and criminal courts of this state, and general sessions courts for personal property where the value of personal property subject to forfeiture does not exceed the jurisdictional limits of the court and the state and defendant consent to the exercise of jurisdiction by the general sessions court. Jurisdiction over the interests of a third party who is not a defendant in the criminal prosecution must be exercised in a separate civil forfeiture action.

SECTION 2. Tennessee Code Annotated, Section 39-11-708 is amended by adding the following as subsection (d) and by renumbering the remaining subsections accordingly:

(d) If real or personal property of a criminal defendant is to be forfeited as part of a criminal prosecution, the indictment or information must contain notice in a separate count that the State will seek forfeiture of property under the provisions of this chapter and all property subject to forfeiture must be generally described within the separate count. By agreement of the state and the defendant, a general sessions court may enter upon the judgment of the case that the property is to be forfeited or returned. The state must establish by a preponderance of the evidence that the property is subject to forfeiture under this chapter and that one (1) or more acts described in Section 39-11-703 giving rise to forfeiture occurred after June 27, 1998, regardless of when the property was originally acquired, as long as the defendant's interest in the property was acquired or appreciated following the commission of an act giving rise to forfeiture. As soon as practicable after entering a guilty verdict or accepting a plea of guilty or nolo contendere on any count in an indictment, presentment, or information with regard to which criminal forfeiture is sought, the court shall determine whether the state has established that the property is subject to forfeiture. The court's determination may be based on evidence already in the record, including any written plea agreement, or if forfeiture is contested on evidence or information presented by the parties at a sentencing hearing. Upon the request by the state or the defendant in a case in which a jury returns a verdict of guilty, the jury shall determine in a bifurcated hearing whether the state has established that the property is subject to forfeiture. The state and defendant may introduce evidence at the forfeiture hearing. If the jury or court finds that the state has met its burden of proof from all the evidence in the case then each property determined to be subject to forfeiture shall be designated in a special verdict and forfeited in accordance with this chapter. Such criminal forfeiture action shall be charged within five (5) years after the conduct giving rise to forfeiture terminates. If a third party who is not a defendant in the criminal action has an interest in any of the property

described in the criminal forfeiture count of the indictment or information then the state shall determine the rights of the third party in a separate civil forfeiture action under this chapter.

SECTION 3. This act shall take effect January 1, 2002, the public welfare requiring it.